IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2736 OF 2004
ALONG WITH
CRIMINAL WRIT PETITION NO.2737 OF 2004

Mr. Roopvinder Singh T. Sethi
and anr. ...Petitioners.

V/s

Pooja Books Pvt. Ltd. & Ors. ...Respondents.

Mr. Girish Nagarsheth i/b M/s. Mulla & Mulla & C.B.C.
for the petitioners.
Mr. Subodh Desai for the respondent No.1.
Mr. D.P. Adsule, APP for the respondent - State.

CORAM: V.M.KANADE,J.

DATE: 29th April, 2005.

P.C.:

1. Petitioners are challenging the order of issuance of process by the Metropolitan Magistrate, 21st Court, Bandra, Mumbai on a complaint filed under section 138 of the Negotiable Instruments Act by respondent No.1.

2. It is submitted by the learned Counsel appearing on behalf of the petitioners that the petitioners were not directors of respondent No.2 - Company and were not in charge and responsible for the day-to-day affairs of respondent No.2 - Company and, therefore, they cannot be tried for the offence punishable under section 138 of the said Act. It is submitted that the petitioners resigned on 2/5/2002 and their resignation

was duly intimated to the Registrar of Companies by submitting Form 32. It is further submitted that by advocate's reply dated 20/11/2002, petitioners informed the advocate of respondent No.1 that they were no longer directors of respondent No.2 - Company and, therefore, notice against them should be withdrawn.

3. I have perused Form 32 which is annexed to the Petitions. The learned Counsel appearing on behalf of respondent No.1 candidly admitted that they did not have any material to dispute the said averment made by the petitioners in the petition.

4. Since the fact of resignation is established by the entry made in Form 32 wherein their resignations have been recorded by the Registrar of Companies, Writ Petitions will have to be allowed. Both the above Writ Petitions are accordingly allowed in terms of prayer clause (a). However, liberty is given to respondent No.1 to apply to the learned Magistrate under section 319 of the Code of Criminal Procedure if any material is received by them for the purpose of challenging the veracity of the statement of the petitioners that they have resigned as directors of the Company and that they were not in charge of the

Company at the time when the offence was committed. If such an application is made, the trial court shall decide the application on merits and in accordance with law.

5. Both the Writ Petitions are disposed of in the above terms.

V.M. KANADE, J.